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(1897) 30 Ore. 457. See also *Littell* v. *Rogers* (1896) 99 Ga. 95. Secondly, there are cases that reject such evidence absolutely. *Gilliam* v. *Parkinson* (1826) 4 Rand. (Va.) 325; *Shinkle* v. *Crock* (1851) 17 Pa. St. 159. Thirdly, the suggestion has been made that the evidence is admissible or not according as the mark has or has not something about it rendering it reasonably capable of identification as the mark of some particular person. *George* v. *Surrey* (1830); 1 Moody & Malkin 516; *Carrier* v. *Hampton* (1850) 11 Ired. Law 307.

The cases above cited differ from that now in question in two important respects, as is pointed out by the court. In all, the mark which was the subject of the dispute was a mark in the special sense of the word; that is, an arbitrary combination of lines, supplying the place and having the effect of an ordinary signature. Such a mark, if a man were in the habit of making it, might well acquire peculiar traits, which would make it recognizable by those who were acquainted with similar specimens by the same hand. But that a number of lines drawn on one occasion only and for the purpose of cancellation should have an ascertainable resemblance to a signature in writing is a proposition that goes far beyond anything established by any series of decisions. The court in this case, therefore, was not obliged to commit itself as to the admissibility of evidence regarding signatures by mark, though it did intimate a preference for a fairly strict rule. It said very properly that the connection between the things here sought to be compared was so remote as to furnish no ground for the expression of an opinion by a witness.

The present case is also unique in that the testimony sought to be introduced was that of an expert. The value and the abuses of this kind of evidence have been the subject of much controversy (see 1 COLUMBIA LAW REVIEW 180), but experts in handwriting, at least, should stand in no better position than the non-professional witness. Their skill may be equivalent to his personal acquaintance with the particular handwriting, but it does not license them to testify as to that which is *prima facie* impossible. In other words, the principle on which the court here proceeds is that expert evidence requires just as much logical basis as does that of any other witness.

An attempt was made to justify the admission of the evidence by reference to the New York statutes on comparison of handwriting, Laws 1880, c. 36, and Laws 1888, c. 555, which provide for "comparison of a disputed writing" with certain kinds of writing specified. This was the view of the lower court, *Matter of Hopkins* (1902) 73 App. Div. 559, but it rests on a misinterpretation of the statutes. The effect of these was exhaustively considered in *People* v. *Molineux* (1901) 168 N. Y. 264 (commented on in 2 COLUMBIA LAW REVIEW 39); and it was declared to amount only to a modification of the technical common law rules relating to comparison of handwriting. Apart from the doubt whether the term "writing" could include any inscription whatever, it is not to be supposed that the legislature meant to vary the logical principle as to what is evidence when it changed the legal rules respecting its admissibility.

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IMPLIED COVENANTS FOR QUIET ENJOYMENT.—It was decided in a recent case—*Budd Scott* v. *Daniell*, [1902] 2 K. B. 351, that a cove-

nant for quiet enjoyment would arise by implication in a lease which created the tenancy by the use of the words—"agrees to let." The broad question was squarely presented, whether an implied covenant for quiet enjoyment depends upon the use of technical words like "demise" or "farms to let," or arises from the existence of the relation of landlord and tenant.

Only a few years earlier in the case of *Baynes & Co.* v. *Lloyd & Sons*, [1895] 2 K. B. 610, Lord KAY declared that "The weight of authority is in favor of the view that a covenant in law is not implied from the mere relation of landlord and tenant, but only from certain words in creating the lease." The conflict of authority on this subject was due to a failure to distinguish the principles underlying implied warranties in freeholds and implied covenants for quiet enjoyment in leaseholds. The former—the first real covenant known to the law—was one of the incidents of tenure. It was given by the feudal lord in return for homage. When charters and deeds came into the law of real property as a record of feoffments the use of the words "*dedi*" and "*encambium*" in them gave rise to their implication of this warranty. Owing its origin to this elaborate ceremony of feoffment,—a system so cumbersome and technical that estates were gained or lost by the omission of a word or phrase, a warranty assumed a similarly technical nature and could only be implied by employing these words—*dedi* or *encambium*. *Sheppard's Touchstone* 165. When at a much later date the implied covenant for quiet enjoyment first appeared, it arose by implication in a lease creating the tenancy by the use of the word "demisi,"—*Noke's Case*—(1599) 4 Coke's R. 80,—and upon analogy to an implied warranty the idea was consequently entertained that this covenant could only be implied by the use of its word of art—"demisi." *Line* v. *Stephenson et al.*, (1838) 4 Bing. N. C. 678; *Williams* v. *Burrell*, (1845), 1 C. B. 402. In the former case Chief Justice TINDAL, speaking for the court, said, after discussing the words—"dedi" and "demisi"—"These words, after they have had their direct operation in creating the estate, have a new and secondary operation given them by law and are held to form a covenant by the feoffor or lessor for quiet enjoyment of such estate as they have already created." But the analogy to warranty, on which this technical treatment of implied covenants for quiet enjoyment was based, fails entirely. The distinction, indeed, extends from their source to their effect. The old warranty of a freehold—an incident of tenure—gave to the covenantee the right to recover of the covenantor an estate equal in value and rank to the one he had lost, while the covenant for a quiet enjoyment—a creation of contract—only gave to the lessee the right of compensation for his eviction. The derivation and reason which confined the implication of implied warranties in freeholds within such narrow limits did not apply to this other class of covenants, and the broadening tendency of the law in vouchsafing the greatest possible protection and security to the estate of leasehold was to cast off the technicalities that had fettered the free implication of implied covenants for quiet enjoyment. This change was recognized in the leading case of *Bandy* v. *Cortwright*, (1853) 8 Ex. 913, which held a covenant for quiet enjoyment could be

implied in a parol lease. In *Hall* v. *London Brewery Co.*, (1862) 2 B. & S. 737, a much broader principle was established that a covenant for quiet enjoyment would be implied from the ordinary words of letting or their equivalents. This view, which may be described as the modern English rule, prevails in most of the United States where the leading cases of *Dexter* v. *Mauley*, (1849) 4 Cush 14, *Ross* v. *Dysart*, (1859) 33 Pa. St. 452, *Maxwell* v. *Urban*, (1900) 22 Tex. C. A. 565, had anticipated the principal case in deciding that the covenant for quiet enjoyment would be implied in leaseholds from the existence of the relation of landlord and tenant. Since such a result seems so desirable in both theory and practice, it is fortunate that the leading modern case cited as opposed to it—*Baynes* v. *Lloyd*, *supra*—was necessarily decided upon another point so that its authority against this doctrine is entitled to little greater weight than that of a dictum.

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POWER OF THE PRESIDENT TO PARDON CONTEMPTS OF COURT.—The decision in the recent case *in re Nevitt* (C. C. A. 8th Circ. 1902) 117 Fed. 448, calls attention to the importance of the distinction between civil and criminal contempts. In civil contempts the defendant is fined or imprisoned for the purpose of securing to the suitor his rights. Criminal contempts, on the contrary, are punitive proceedings instituted to vindicate the dignity of the Court. *People ex rel. Munsell* v. *Court of Oyer & Terminer* (1886) 101 N. Y. 245, 247. *In re Nevitt* decides that the President cannot pardon civil contempts and suggests that he cannot pardon criminal ones. The classification has an historical justification. From Saxon times acts of disrespect to the King were treated as a mild form of treason and known as contempts. The nature of the offence was the same whether or not it was against the King as judge and it was punishable in the same way as other crimes. The use of the present contempt process to punish this offence when committed against the King through his courts was of comparatively late development. It was either worked out from the Stat. Westm. 2, 13 Edw. 1. c. 39, as Gilbert thinks, Hist. C. P. 24, or borrowed by the law courts from Chancery where it was used in aid of a suitor's rights. As the judgments of the Chancellor were in the form of commands of the King failure to obey was rebellion. By the process of attachment, adopted from the civil law, the contemnor was brought before the Chancellor and committed until he obeyed the order. Langdell's Summary of Equity Pleading, p. 30. Thus the same process came to be used to punish a crime and to secure to a suitor his civil rights. There was a significant difference in procedure, however. In the law courts the defendant could disprove his contempt by his own oath. In Chancery the suitor to protect his rights was allowed to contradict the defendant's testimony. *King* v. *Vaughan* (1780) 2 Doug. R. 516.

The pardoning power of the King extended to all public offences. That the general pardon specifying "contempts" included what the principal case terms "criminal" contempts, seems never to have been questioned in England. In the earlier law it also included "civil" contempts, This was a natural result, for though the object of the Chancery process was remedial, in form it purported to deal with a